

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

Case:- LPASW No.27/2013

Date:24.05.2013

Meera Sharma Vs. State and others

Coram:

**Hon'ble Mr. Justice Muzaffar Hussain Attar
Hon'ble Mr. Justice Bansi Lal Bhat**

Appearing counsel:

For the Appellant(s) : Mr. F. A. Natnoo, Advocate.
For the Respondent(s) : Mrs. S. Hakim, Dy. AG for
respondent Nos.1.
Mr. S. K. Shukla, Advocate with
Mr. Rahil Raja, Advocate for
respondent No.2.
Mr. Abhinav Sharma, Advocate
for respondent No.3.

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- i. Whether approved for reporting
in Press/Media :
- ii. Whether to be reported in
Digest/Journal : **Yes**
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Muzaffar Hussain Attar

(Oral)

1. The appellant and respondent No.3 responded to Advertisement Notice No.09 of 1997 dated 24.10.1997 and sought consideration for being selected and appointed on the post of Sericulture Assistant. Respondent No.3 was selected and appointed on the post of Sericulture Assistant in year 2003. The appellant alongwith one Sanjay

Romitra challenged the selection/appointment of respondent No.3, inter alia, on the grounds that the respondent No.3 was not possessed of the qualification prescribed in the Advertisement Notice as also the Statutory Rules notified vide SRO 347 of 27.06.1979 (for short 'Rules of 1979') whereunder the 'minimum qualification for direct recruitment' for the post of Sericulture Assistant is prescribed as B.Sc. (Natural Science) with P.G. Diploma from any Institute recognized by the Central Silk Board. Additional 30 marks were also given to respondent No.3 when she was not entitled to get the same .

2. Respondent No.3 filed reply/objections to the Writ Petition of the appellant, in which, it was stated that respondent No.3 was possessed of the prescribed qualification. The Service Selection Board also disclosed the criteria, which was adopted for the selection of Sericulture Assistant. The Service Selection Board adopted the following criteria:-

“Weightage to basic qualification -50 points

Weightage to higher qualification

and weightage to experience -30 points

Viva Voce -20points”

3. Learned Writ Court dismissed the Writ Petition vide its the judgment dated 30.11.2012. The appellant who was Petitioner No.1 in the writ petition, has challenged the judgment in this Letters Patent Appeal.
4. Mr. F. A. Natnoo, learned counsel for the appellant, submitted that even if it is assumed that the P.G. Degree, which the respondent No.3 is possessed of is the maximum qualification of the minimum qualification of P.G. Diploma from any Institute recognized by the Central Silk Board, then in terms of the criteria adopted, the said higher qualification would be treated as basic qualification and no additional weightage could be given to respondent No.3. Learned counsel submitted that the respondent No.3 has been given the two benefit in respect of the same certificate viz., it has been considered as basic qualification and thereafter it is treated as higher qualification and additional 30 marks have been given to respondent No.3. Learned counsel

submitted that the appellant besides being possessed of the minimum qualification prescribed for the post is also possessed of PG Degree in Natural Science, a higher qualification, but no points/marks have been awarded to her in this behalf. Learned counsel submitted that in view of the merit position disclosed by the Service Selection Board, in their objections/reply affidavit, if 30 additional marks given to the respondent No.3 are deleted from total secured marks and additional 30 marks are given to the appellant, then it is the appellant who is to be selected and appointed on the post of Sericulture Assistant from the date, the respondent No.3 has been selected/ appointed on the post. Learned counsel submitted that the learned Writ Court has wrongly placed reliance on the judgment rendered in case titled '**Jyoti K. K. Vs. Kerala Public Service Commission**' (Case No.2194, 2200 of 2002 decided on 13.03.2002) as in the said case there was a specific provision whereunder it was declared that a person possessed of higher qualification in the same

discipline would be pre-supposed to be possessed of the inferior qualification prescribed by the Rules. Learned counsel submitted that in the present case, there is no such Rule, as such, the reliance could not be placed on said judgment.

5. It is submitted by Mr. Natnoo at the Bar that appellant has been appointed by promotion on the post of Sericulture Assistant vide order dated 28.02.2012.
6. Mr. S. K. Shukla, learned counsel appearing for Service Selection Board, in his fairness, stated that in the criteria which was adopted by the Board for making selection to the post of Sericulture Assistant, it has not been mentioned that additional 30 marks would be given to a particular higher qualification only. Learned counsel submitted that it has been simply stated that higher qualification would be given additional weightage of 30 marks.
7. Mr. Abhinav Sharma, appearing for respondent No.3, submitted that the respondent No.3 has been selected and appointed on the post of Sericulture Assistant on the basis of her merit.

Learned counsel submitted that in the viva voce, respondent No.3 was given less marks than that of the appellant. Learned counsel then submitted that even if it is assumed that 30 additional marks are taken away or deducted from total marks of the respondent No.3, even then in view of the merit position disclosed by the Service Selection Board in the objections, the appellant cannot be selected because she is lagging in the merit vis-a-vis respondent No.3. Learned counsel submitted that the higher qualification has to be in tune with the requirement of the post and in this case, it is the post of Sericulture Assistant, as such, higher qualification in Sericulture alone can be given additional weightage. Learned counsel in the alternative submitted that in case the Court comes to the conclusion that the additional marks have been wrongly given to respondent No.3 and that additional marks have to be added to the merit position of the appellant, then, in the ends of justice and in exercise of equitable jurisdiction, the selection/appointment of respondent No.3 has to be protected as she

has been appointed in the year 2003. Learned counsel submitted that a direction can be issued to the official respondents to give seniority to the appellant from the date, respondent No.3 has been appointed and that the appellant in such circumstances would be treated as senior to respondent No.3 in the class of Sericulture Assistant. Learned counsel for respondent No.3 consented for treating the appellant senior to respondent No.3 in the category of Sericulture Assistant.

8. Learned counsel for respondent No.3, in support of his submissions, referred to the judgments of following cases:-

i) **'State of U.P. and others Vs. Desh Raj'**

reported in **(2007) 1 Supreme Court Cases 257**

ii) **'Ashok Kumar Sonkar Vs. Union of India**

and others' reported in **(2007) 4 Supreme Court Cases 54.**

9. Under Clause (III) category B of Schedule A appended to the Rules 1979, the minimum qualification for direct recruitment for the post of Sericulture Assistant and method of recruitment

is prescribed as under:-

“III. B. Sericulture Assistant 280-520	B.Sc. (Natural Sciences) with Post Graduate Diploma from any Institute recognized By the Central Silk Board	50% by direct recruitment and 50% by promotion from Class V-A in the following manner:- 1. Matric having 10 Years experience With Junior Sericulture Training. 2. Graduates having 7 years experience with Junior Sericulture Training. 3. Graduates with Post Graduate Diploma in Sericulture having 3 years experience.”
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10. In view of the certificate issued by the Competent Authority, the Post Graduate degree of respondent No.3 being higher qualification to that of Post Graduate diploma, and respondent No.3 being possessed of B.Sc. (Natural Sciences) is held to be eligible and her candidature has rightly been entertained by the Board.
11. The issue of importance, which has cropped up for consideration of the Court is, as to whether the Post Graduation qualification of respondent No.3 would entitle her to get credence as basic qualification and also that of higher qualification, and the degree of M.Sc. in Natural Science, which is possessed by the appellant would entitle her to get the additional marks. The merit position as

disclosed by the Service Selection Board in the objections is to be taken note of:-

“	Academic Quali.	Tech. Quali.	Marks Obtained	Weightage 50 pts.	Addl. Pts.	Viva	Total
Petitioner No.1	B.Sc./M.sc.	PG Diploma in Seri.	623/1100	28.332	-	13.66	41.98
Petitioner No.2	B.Sc./LLB	-do-	717/1100	32.59	-	15.66	48.25
Respondent No.2	B.Sc.	M.Sc. in Seri.	1069/1650	32.39	30.00	11.33	73.72 Pts.”

12. Admittedly, respondent No.3 was possessed of the qualification of B.Sc. (Natural Science), but was not possessed of Post Graduate Diploma from any institute recognized by the Central Silk Board. Respondent No.3's Post Graduate degree is to be treated as the basic qualification prescribed for direct recruitment, since the Post Graduate degree is higher qualification to that of Post Graduate diploma which is the “minimum qualification prescribed”. Respondent No.3's Post Graduate degree, thus, is to be taken as basic qualification and the marks/points allotted to that degree out of 50 points earmarked for the basic qualification have to be alone considered. No additional weightage in the facts of this case could be given to respondent No.3 for having

higher qualification. It would be unreasonable to treat one degree certificate as basic qualification and award marks on the basis of such degree to the candidate and then to give further additional marks to the same degree treating it to be higher qualification. Two benefits can not flow from one degree/certificate. Marks given to one certificate twice is not recognized in Service Jurisprudence and such benefit cannot be given, unless a particular Rule prescribes for awarding of marks twice to one degree certificate.

13. The Service Selection Board has illegally given additional weightage to the Post Graduate degree of respondent No.3. Respondent No.3 in the facts of this case could not be given additional 30 marks. 30 marks given to respondent No.3, thus, are to be deleted from her total merit.
14. Another issue, which requires to be dealt with, is as to whether the Post Graduate degree in Natural Science possessed by the appellant has to be given additional weightage. The criteria adopted by the Service Selection Board would indicate that weightage of 30 marks is to be given

to higher qualification. It does not say that weightage to higher qualification can be given only when the candidate attains higher qualification in the discipline of Sericulture alone.

15. Mr. Shukla, in his fairness, also conceded this position and stated that Service Selection Board has not qualified the expression “weightage to higher qualification”.
16. Since the minimum qualification for direct recruitment prescribed by the Rules is ‘B.Sc. (Natural Science) with Post Graduate diploma, the Post Graduate degree obtained by appellant in the discipline of Natural Science in view of the criteria adopted by the Service Selection Board has to be given higher weightage.
17. On the basis of the above stated legal position, when total points secured by the appellant and respondent No.3 are counted, it is the appellant who secures more merit than respondent No.3, which position is admitted by learned counsel for the parties.
18. In the aforesaid back drop, the selection of respondent No.3 would require to be set aside.

But this Court has not to overlook the fact that respondent No.3 has been appointed in year 2003. It is nobody's case that respondent No.3 has secured appointment by practicing fraud upon the Selection Board. The status of the post of Sericulture Assistant and other service benefits which includes the salary given to respondent No.3 for all these years must have shaped her domestic life. The further fact that respondent No.3, has turned overage, would require this Court to mould the relief in the manner which advances the cause of justice. A Division Bench of this Court in case titled '**Shaheena Masarat (Ms.) Vs. State and Ors.**' reported in **2010 (2) JKJ 353 (HC)** has observed as under:-

“39. It is accordingly, held that though in the admitted fact position private respondent was over age at the time of selection/engagement as R-e-T but same cannot be set aside for the above stated reasons and it is held that private respondent was validly appointed. We are conscious

that Justice has to be administered in accordance with law. But when consequences of actions are likely to be harsh, then equity or mercy gets incorporated as part of concept of Justice according to law.”

19. In view of the aforesaid circumstances, we deem it appropriate not to disturb the appointment of respondent No.3 at this stage as that will work harshly for her and her family. However, since the appellant has been deprived of her lawful right of appointment in the year 2003, it will be appropriate to direct official respondents to give notional seniority benefit to appellant from the date, respondent No.3 has been appointed and treat appellant senior to respondent No.3 in the category of Sericulture Assistant.

20. For the above stated reasons, this appeal is disposed of in the following manner:-

- i) The impugned judgment dated 30.11.2012 passed in SWP No.2407/2003 is set aside.
- ii) The appointment of respondent No.3 shall

remain intact.

- iii) Respondent No.1 is directed to give notional seniority to the appellant in the category of Sericulture Assistant from the date, respondent No.3 is appointed on said post. The seniority shall be given on notional basis. The appellant will not be entitled to any pecuniary benefits as she had not worked on the said post during the aforementioned period.
- iv) Respondent No.1 shall pass appropriate orders and place the appellant ahead of respondent No.3 in the seniority list of Sericulture Assistant. It is further provided that in case by giving notional seniority to the appellant, any other person except respondent No.3 would be affected, then such person(s) shall be given notice and afforded opportunity of hearing.

(**Bansi Lal Bhat**) (**Muzaffar Hussain Attar**)
Judge **Judge**

Jammu
24.05.2013
Narinder